**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU**

**THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929**

**CRL.A.No. 777 of 2002()**
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**SC.279/2000 of ADDL. SESSIONS COURT (ADHOC-2), THRISSUR**
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**APPELLANT: ACCUSED:**
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**THANKAPPAN, S/O. KUTTAN,**
**THOZHUTHUMPARAMBIL HOUSE, MATTATHUR VILLAGE,**
**NALLUVALLY, TRICHUR DISTRICT.**

**BY ADV. SRI.A.C.DEVY**

**RESPONDENTS: COMPLAINANT:**
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**STATE OF KERALA, REPRESENTED BY**
**THE EXCISE INSPECTOR, IRINJALAKKUDA**
**EXCISE RANGE, (CR.28/96) THRISSUR DIST.**
**REP. PUBLIC PROSECUTOR, HIGH COURT OF**
**KERALA, ERNAKULAM.**

**BY PROSECUTOR SRI.C.K.SURESH**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**K.R. UDAYABHANU, J.**

**CRL.A.NO.777 OF 2002**

**DATED THIS THE 1st November 2007**

**JUDGMENT**

The appellant is the accused in S.C.No.279/2000 in the file of the Additional Sessions Judge(Fast Track Court-II (Adhoc Court), Thrissur with respect to the offence under Section 58 of the Abkari Act and stands sentenced to undergo simple imprisonment for six months and to pay a fine of of Rs.1,00,000/- and in default to undergo simple imprisonment for six months. The accused was found in possession of Indian made foreign liquor containing 20 bottles of 375 ml. capacity. The prosecution case is that the excise squad headed by PW5, the Preventive officer while scouting the area on patrol duty in police jeep happened to locate the accused/appellant on 12-4-1998 at about 3 p.m. in front of the shop of Arnakkal Sudhakaran. The accused was carrying a card board box tied with coir and on examination it was found that the packet contained 20 bottles of New Master XXX Rum.

2. The evidence adduced in the matter consisted of the testimony of Pws. 1 to 5 and Exts.P1 to P5 and Mos. 1 to 3. The defence got examined DW1.

3.Pws.1 and 2, the independent witnesses to the detection and seizure did not support the prosecution version. It is mentioned that Pw1, who is the next door neighbour of the accused. PW2 is another person of that locality. He admitted his signature in Ext.P1, but denied his presence. It is Pws.5 and 4, the official witnesses who have testified as to the detection and seizure. The point stressed by counsel for the appellant is that the name mentioned as the place in front of the shop the accused was stopped with the excise party is Sudhakaran and not Sukumaran as deposed by Pws.4 and 5. In Ext.P5 arrest memo the name mentioned is Arnakkal Sudhakaran. It is the version of the accused when questioned under Section 313 Cr.P.C. that he has been falsely implicated at the instance of one Arnakkal Sudhakaran, who has a grudge against him. In order to establish the fact that there is no such person is Arnakkal Sukumaran, the defence got the summons issued to Arnakkal Sukumaran as a witness and the summons was not received stating that there is no such person in that address.

4. All the same it has come out in evidence of Pws.4 and 5 that they are not conversant as to the identity of the above person but it is not disputed that there is such shop at the spot. I find that in view of the direct evidence of Pws.5 and 4, the Preventive Officer and

Excise Guard as to the detection and seizure and the arrest of the accused the prosecution case is not to be disbelieved. The recitals in Ext.P1 mahazar tally with the version of Pws.4 and 5. Ext.P4 chemical analysis report established the fact that the articles seized is liquor the possession of which to the above mentioned quantity is punishable. The appellant/accused could not produce any bills with respect to the purchase of the liquor. Hence, the decision reported in **Sabu v. State of Kerala, 2003(2)K.L.T. 173** would not be applicable to the facts of the present case. Hence, the above contention of the counsel for the appellant has no merit. In the circumstances and in the light of the evidence adduced in the matter, I find that the finding of the court below as to the quilt of the accused is liable to be confirmed; and I do so.

So far as the sentence is concerned, counsel for the appellant has pleaded for leniency pointing out that about 10 years have elapsed since the commencement of the proceedings and so far the accused was facing the criminal prosecution. It is also pointed out that the entire family of the appellant is depending on his income for their livelihood. In the circumstances and in view of the fact that the contraband seized is not spurious liquor, the sentence is modified to imprisonment till the rising of the court and to pay a fine of

Rs.1,00,000/- and in default to undergo simple imprisonment for six months. Counsel for the appellant has sought for time to remit the fine amount mentioning that the accused is too poor to raise the amount immediately. Hence, the accused is granted six months time to remit the fine amount. Non-bailable warrant pending, if any, shall be kept in abeyance till then. The appellant/accused shall appear before the Additional Sessions Judge, Fast Track Court-II (Adhoc Court), Thrissur on 2-5-2008 to receive sentence. The appeal is disposed of accordingly.

**K.R.UDAYABHANU, JUDGE**

**ks.**

K.R.UDAYABHANU, J

CRL.A. NO. 777 OF 2001

JUDGMENT

1-11-2007